

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2185.05
COMPLAINT INVESTIGATOR:	Sally Cook
DATE OF COMPLAINT:	October 12, 2004
DATE OF REPORT:	November 10, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	November 30, 2004

COMPLAINT ISSUES:

Whether the Monroe County Community School Corporation violated:

511 IAC 7-29-1 by failing to follow procedures for suspensions of the Student.

FINDINGS OF FACT:

1. The Student has been identified as having a mild mental disability and a communication disorder and has been determined eligible for special education and related services.
2. During the period from September 9, 2004, through October 21, 2004, the Student was suspended a total of 16 times. Two of the suspensions were for the balance of the day on which the suspension was imposed and the following school day (i.e., 2-day suspensions). The remaining 14 suspensions were for the balance of the school day on which the suspension was imposed (i.e., 1-day suspensions). In each instance, the School issued a Notice of Suspension that summarized the Student's behavior and identified the school rule number that had been violated. At no time was an expulsion initiated.
3. On September 24, 2004, the Student's case conference committee (CCC) convened. The CCC reviewed and revised the Student's individualized education program (IEP) and continued the placement in a self-contained special education classroom, with an escort to specials. The CCC noted that a Behavior Plan "will be worked up with sensory component included." The Complainant signed consent for an occupational therapy (O.T.) evaluation. The CCC Summary/IEP contains the following statement: "[The Student] is going to have to be sent home when [he/she] is hurting others or we are unsuccessful in de-escalating [him/her] in timely fashion." The Complainant did not sign the CCC Summary/IEP.
4. The Student 10th day of suspension, including parts of days, was October 5, 2004. On October 7, 2004, the Student's CCC reconvened. The CCC discussed the relationship between the Student's behavior and disability, but did not reach a clear conclusion ("Although we feel that [his/her] behavior and disability are related, due to the complex nature of [his/her] disability, and the possibility that a chemical balance exists, it is unclear to what degree the behavior is related to the disability.") The CCC considered but did not agree upon more restrictive placements. The IEP was revised in several ways including the addition of sensory supports. The CCC planned an on-going functional behavior assessment (FBA) and developed a Behavior Plan (BIP) that included a data collection procedure linked to the FBA.

5. The Student's BIP incorporated 11 proactive strategies and 9 reactive strategies. The last in the list of reactive strategies was to call the Complainant and send the Student home as a last resort. The BIP specified the circumstances in which this last resort would be utilized. The BIP is a part of the IEP. The School implemented the sensory supports and other strategies in the BIP. The Complainant did not sign the revised IEP until October 19, 2004.
6. After October 7, 2004, and before October 19, 2004, the Complainant had not signed the revised IEP including the BIP, and the School continued to document the Student's removals from school as suspensions. During the period from October 7, 2004, through October 19, 2004, the Student was suspended 5 times for a total of 6 days including parts of days.
7. On October 19, 2004, the CCC reconvened. A change of placement to homebound services, was proposed. In addition to instructional time, the homebound services include the School's payment for certain support services provided by a private therapist chosen by the Complainant. After clarifying certain details regarding the number of hours of homebound instruction, the Complainant provided written consent for the homebound placement on October 24, 2004.
8. When determining the extent to which services were necessary during suspensions before October 7, 2004, the Principal and the TOR took into consideration the fact that the Student had received instruction during school hours prior to the suspension. Prior to the 10th cumulative day of suspension, the Student's work was sent home when the Student was suspended, and the special education teacher of record (TOR) was available by telephone. On October 7, 2004, the CCC incorporated in the BIP a determination of necessary services by specifying that work would be sent home with the Student and the TOR would contact the parents to answer questions about the work. Although the Complainant does not recall that work was sent home on all days, the Complainant acknowledges that work was sent home many days, and the Complainant also acknowledges that the TOR and the Complainant conferred frequently by telephone.
9. On or about October 15, 2004, when the School suspended the Student, the Complainant did not promptly come to the School to take the Student home. The School called the local police. Although the Notice of Suspension does not state that the Student's conduct violated state law, the Notice of Suspension states that the Student intentionally caused physical injury to himself and others.
10. On or about October 15, 2004, the School telephoned the Complainant regarding the Student's need for diagnosis and evaluation. The School warned that the School would notify Child Protective Services if the Complainant did not obtain needed medical services. The notes of the October 7, 2004, CCC meeting document the School's earlier offer to pay for an independent evaluation of the Student. The Complainant does not allege that a report to CPS was made.
11. The Student's 16th suspension occurred on October 21, 2004, after the Complainant had signed IEP that included the BIP.

CONCLUSION:

Finding of Fact #2 indicates that the School complied with the procedures of state law, as required by 511 IAC 7-29-1(l), and counted suspensions for part of a day as a day of suspension, as required by 511 IAC 7-29-1(c). Findings of Fact #2, #3, #5, and #6 indicate that the removals of the Student on and before October 19, 2004, were suspensions, as described by 511 IAC 7-29-1(a) and permitted by 511 IAC 7-29-1(d)(1), and were not short term removals pursuant to the Student's IEP, as described by 511 IAC 7-29-1(b). However, Finding of Fact #11 indicates that the removal of the Student on October 21, 2004, was a short term removal pursuant to the Student's IEP, as described by 511 IAC 7-29-1(b). Findings of Fact #4, #5, and #7 indicate that within 10

business days after first suspending the Student for more than 10 cumulative instructional days in the 2004-2005 school year, the School convened the CCC to develop a plan for an FBA, to develop a BIP, and to consider changes of placement, as required by 511 IAC 7-29-1(f) and 511 IAC 7-29-5. Findings of Fact #2 and #6 indicate that a series of suspensions that constitute a pattern occurred, as described in 511 IAC 7-29-1(j), and thus a change of placement for disciplinary removals, as defined at 511 IAC 7-17-13(b), occurred. Finding of Fact #4 indicates that the CCC convened to conduct a review of the relationship between the Student's disability and the behavior subject to the disciplinary action, as required by 511 IAC 7-29-6 when additional suspension involves a removal that constitutes a change of placement, and Finding of Fact #7 indicates that the CCC had not concluded the manifestation determination when the CCC agreed to change the Student's placement, as permitted by 511 IAC 7-29-6(h). Finding of Fact #8 indicates that the Principal and the TOR determined the educational services necessary during suspensions prior to the 10th cumulative day of suspension, as permitted by 511 IAC 7-29-1(h), and thereafter the CCC determined the Student's educational services, as required by 511 IAC 7-29-1(i), and Finding of Fact #8 also indicates that educational services were provided, as required by 511 IAC 7-29-1(f). Findings of Fact #9 and #10 do not indicate circumstances that violate special education rules because Schools may report crimes to appropriate authorities, as permitted by 511 IAC 7-29-9, and must report suspected abuse or neglect as required by state law. Therefore, no violation of 511 IAC 7-29-1 is found.

The Department of Education, Division of Exceptional Learners requires no corrective action based on the Findings of Fact and Conclusions listed above.